THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.4897 of 2007

Date: September, 2007

Between :-

Smt. M.Jamshad Bee .. Petitioner

And

The District Collector, Kurnool District and 2 others .. Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.4897 of 2007

ORDER:-

This Court issued *rule nisi* on 26-7-2007.

2. Counter affidavit is filed on behalf of respondents.

3. The matter is appearing under the Interlocutory but at the request of the Counsel on record, the matter is being disposed of finally.

4. Smt.M.Jamshad Bee, the petitioner filed the present Writ Petition for a Writ of Mandamus declaring the inaction of the respondents in allotting commodities to the petitioner who is a permanent Fair Price Shop Dealer of Gorukal village, Panyam Mandal, as illegal, improper, arbitrary and against law besides being violative of Articles 14, 19 and 21 of the Constitution of India and consequently direct the respondents herein to allot the essential commodities to the petitioner and continue to allot the same in the interest of justice and pass such other suitable orders.

5. It is averred by the writ petitioner that she had been appointed as Fair Price Shop Dealer to Gorukal village, Panyam Mandal on 8-2-2005 on temporary basis in the vacancy caused due to resignation of Smt.Lakshmi Devi, permanent Fair Price Shop Dealer on the ground of her ill-health vide proceedings of the Revenue Divisional Officer, Nandyal, in L.Dis.No.145 of 2000, dt.8-2-2000 and from the date of her appointment, she had been working as a Fair Price Shop Dealer on temporary basis without any remarks. It is also further averred that the Sub-Collector,

Nandyal, issued notification calling for the applications for the post of permanent dealership of Gorukal village, Panyam Mandal. It is also averred that since the petitioner had already been working as a Fair Price Shop Dealer on temporary basis of Gorukal village applied for permanent post and in response to her application, the Sub-Collector Office issued notice asking her to appear before the Revenue Divisional Officer, Nandyal on 1-2-2001 for written test at 11.00 a.m., and oral test at 3.00 p.m., along with certificates and she attended for the above tests and selected for Fair Price Shop Dealer of Gorukal village and appointment order vide Rc.E.1258/99 dt.10-2-2001 had been issued and ever since, she had been working regularly as permanent Fair Price Shop Dealer without any remarks. It is also further averred at para 4 of the affidavit filed in support of the Writ Petition that while the matters stood thus, the petitioner applied leave for three months w.e.f. 31-8-2006 on medical grounds as her health is not good due to 3 caesarian operations and she took treatment regularly and quickly recovered from her health. It is also averred that after the petitioner's recovery, the petitioner requested the Mandal Revenue Officer, Panyam to allot the commodities as she is alright from the months of September, 2006 i.e., after one month, but the MRO did not allow her to pay DD for commodities. It is also further averred that the dealership of Gorukal was kept under incharge dealer, but distributing with some other person, other than the incharge dealer. It is also stated that having no other

option, the petitioner represented the matter to the District Collector, Kurnool and other Officials with the medical certificate and the doctor also certified the fitness to do the work. Inspite of that nobody had taken any action on her representation for reasons best known to them. In such circumstances, the petitioner approached this Court for appropriate reliefs as specified supra by invoking Article 226 of the Constitution of India.

6. In the counter affidavit filed by the respondents, it is averred that basing on the representation on 15-11-2005, the Tahasildar had enquired in the village Mandal Revenue Inspector on 16-11-2005 and the complaints from 44 card-holders of Gorkal village and reported that the Fair Price Shop Dealer has distributed the Essential Commodities on higher rates than the prescribed Government rates and distributed Essential Commodities two or three days in a month. It is also averred that there is excess of stock of PDS rice in the F.P.Shop at the time of inspection and it is evident that the F.P.Shop dealer has forged the signatures of the cardholders and recommended for disciplinary action against the Fair Price Shop Dealer of Gorkal village. It is also further averred that on the report of the Tahsildar, Panyam, and after considering the nature of the charges, the authorization of the petitioner has been suspended pending enquiry vide his proceedings No.Rc.A.1604/06, dt.9-10-2006 and the same was not served to the petitioner as she rejected to receive the same and as such temporary arrangements for distribution of Essential Commodities have been made

by appointing one T.Ramagopalu, S/o.Hanumanthu as temporary dealer and he is continued as temporary dealer. While denying several of the averments made in paras 1 to 5 further averred that the averments made in 4 of the affidavit that the petitioner applied for 3 months leave is not correct. Further it is averred that there is no provision to apply leave for Fair Price Shop Dealer as per APSPDS Control Order, 2001. It is averred that the petitioner never applied for leave. It is also averred that on the representation received from the cardholders of Gorkal village and on the direction of the Tahsildar, Panyam, the Mandal Revenue Inspector, Panyam had enquired about the irregularities committed by the petitioner and reported that the petitioner had not distributed Essential Commodities properly to the cardholders and distributing the Essential Commodities in two or three days only in a month and also she is distributing the Essential Commodities to the cardholders on higher rates than the prescribed rates and hence her authorization was suspended pending enquiry on 9-10-2006. Further it is also averred that alternate arrangements have been made for smooth distribution of Essential Commodities by appointing a temporary Fair Price Shop Dealer and as such the petitioner had not permitted to remit DDs as her authorization was suspended and the enquiry is still pending. It is also stated that the petitioner could have filed an appeal before the Appellate Authority – Joint Collector, Kurnool and the petitioner approached this Court without availing

alternative remedy.

7. The respective stands taken by the parties already had been specified above. Instead of invoking the alternative remedy, the writ petitioner had approached this Court praying for the reliefs already referred to supra. Even otherwise, the main ground is that the petitioner applied for leave. The learned A.G.P. for Civil Supplies placed reliance on the decision in ***Boda Venkateshwarlu Vs. The District Collector, Prakasam District (CS), Ongole and others (W.P.No.5426/2007)*** dt.16-3-2007 whereunder the learned Judge of this Court observed *"even without going into the issue whether the 5th respondent has locus standi to maintain a revision before the 1st respondent, it requires to be considered that the Control Order does incorporate any provision for application for grant of leave by a permanent authorisee of a Fair Price Shop. Authorisation of a Fair Price Shop is not in the nature of public employment which has the several perquisites appended to public employment, like, casual or earned leave, medical leave and the like. Merely because the petitioner had submitted an application and had also gratuitously suggested that the 3rd respondent was at liberty to appoint any other person during the period he was not running the shop, it was not open to the 3rd respondent to have exercise an authority which was not available under the Control Order and grant leave. Leaving the shop unattended in the absence of any provision for grant of leave for six long months is an*

eventuality which calls for treatment of the authorization as surrendered or abandoned and for a permanent arrangement to be made or to treat it as a vacancy for an initial temporary authorization and thereafter regular notification for grant of a permanent authorization. But to keep the shop reserved for the petitioner's convenience to return after a sabbatical appears inconsistent with the scheme of grant of authorizations, under the provisions of the Control Order. On the analysis the ultimate decision of the 1st respondent to declare that a vacancy is deemed to have arisen in respect of the shop in question and directing the 3rd respondent to issue a notification calling for applications for grant of authorization, suffers from no substantive error warranting interference in exercise of the discretionary jurisdiction of mandamus under Article 226 of the Constitution. This Court discerns no revisable error warranting interference. Reliance also was placed on ***Alepati Soma Sekhar v. Collector, Krishna District (2003 (3) ALD 62).*** In the light of the events specified in the counter affidavit and also in view of the petitioner not availing alternative remedy and also in the light of the view expressed by the learned Judge of this Court referred to supra in W.P.No.5426/2007, this Court is of the considered opinion that the Writ Petition is devoid of merit and accordingly, the same shall stand dismissed. No order as to costs.

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Justice P.S.Narayana

September, 2007

smr